



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Medical Devices of Fall River, Inc.
File: B-232336
Date: September 14, 1988

DIGEST

Protest is dismissed as academic where contracting agency reverses decision--that protester is precluded from proposing use of a debarred subcontractor--which gave rise to the protest. Protester's contention that contracting agency improperly will consider subcontractor's debarred status as part of determining protester's responsibility is not for consideration by General Accounting Office (GAO) because the protester is a small business and any nonresponsibility determination will be referred to the Small Business Administration for a final determination of offeror responsibility which GAO generally will not review.

DECISION

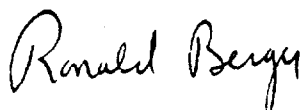
Medical Devices of Fall River, Inc. (MDI) protests the award of a contract to any other offeror under request for proposals (RFP) No. DLA120-88-R-0496, issued by the Defense Personnel Support Center (DPSC). We dismiss the protest as academic.

According to MDI, it is the lowest-priced acceptable offeror and therefore is in line for award under the RFP. By letter dated July 18, 1988, DPSC informed MDI that, because its proposed subcontractor had been debarred by the Defense Logistics Agency, MDI was not eligible for award under the RFP unless it proposed a different subcontractor. On August 18, MDI filed its protest with our Office, contending that DPSC may not rely on the debarred status of its subcontractor to disqualify MDI from receiving award. By letter dated August 29, DPSC retracted its July 18 letter and advised MDI that it was fully eligible for award. DPSC stated, however, that MDI's proposed use of a debarred subcontractor would be considered in determining MDI's responsibility.

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Since DPSC has reversed its initial position that MDI is ineligible for award unless it changes its proposed subcontractor, MDI has received the relief it requested and as a result the protest is academic. MDI disagrees, arguing that DPSC has merely shifted its improper consideration of its subcontractor's debarment to the context of MDI's responsibility. However, since MDI is a small business, if DPSC finds MDI to be nonresponsible, that determination would then be forwarded to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC). See Federal Acquisition Regulation § 19.602. Because of SBA's role in this area and because the SBA's decision to issue or not issue a COC generally is conclusive on the question of the offeror's responsibility, we do not consider protests by a small business that it has been found nonresponsible except in limited circumstances not apparent here. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(3) (1988). Accordingly, there is no basis for us to consider this protest further.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel